

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Baltimore Division)**

---

CAPITAL FUNDING, LLC,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. ELH-16-2485
	)	
AVI "ZISHA" LIPSCHUTZ,	)	
DOV NEWMARK, and	)	
LARRY LIPSCHUTZ,	)	
	)	
Defendants.	)	
	)	

---

**ANSWER AND AFFIRMATIVE DEFENSES  
TO COMPLAINT FOR BREACH OF GUARANTY**

Avi "Zisha" Lipschutz, Dov Newmark, and Larry Lipschutz (collectively, the "Defendants") by and through their undersigned counsel, and as to their Answer and Affirmative Defenses to the Complaint for Breach of Guaranty (the "Complaint") filed by the above-captioned plaintiff (the "Plaintiff"), hereby state as follows:

**NATURE OF ACTION**

1. Defendants assert that paragraph 1 of the Complaint sets forth legal conclusions to which no response is required. To the extent an answer is required, Defendants deny the allegations set forth in paragraph 1 of the Complaint.

**THE PARTIES**

2. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint.

3. Admitted.

4. Admitted.

5. Admitted.

#### **JURISDICTION AND VENUE**

6. Defendants assert that paragraph 6 of the Complaint sets forth legal conclusions to which no response is required, except Defendants admit that the amount in controversy exceeds \$75,000.

7. Defendants assert that paragraph 7 of the Complaint sets forth legal conclusions to which no response is required. To the extent an answer is required, Defendants deny the allegations set forth in paragraph 7 of the Complaint.

8. Defendants assert that paragraph 8 of the Complaint sets forth legal conclusions to which no response is required. To the extent an answer is required, Defendants deny the allegations set forth in paragraph 8 of the Complaint.

#### **ALLEGED FACTS**

9. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint.

10. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint.

11. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint.

12. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint.

13. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint.

14. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint.

15. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint.

16. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint.

17. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint.

18. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint.

19. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint.

20. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint.

21. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint.

22. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint.

23. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint.

24. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint.

25. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint.

26. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 26 of the Complaint.

27. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint.

28. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint.

#### **FIRST ALLEGED CAUSE OF ACTION**

29. Defendants repeat and reallege every response set forth in paragraphs 1 through 28 as if each was fully set forth herein.

30. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 30 of the Complaint.

31. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 31 of the Complaint.

32. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 32 of the Complaint.

33. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 33 of the Complaint.

#### **SECOND ALLEGED CAUSE OF ACTION**

34. Defendants repeat and reallege every response set forth in paragraphs 1 through 33 as if each was fully set forth herein.

35. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 35 of the Complaint.

36. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint.

37. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint.

38. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint.

### **THIRD ALLEGED CAUSE OF ACTION**

39. Defendants repeat and reallege every response set forth in paragraphs 1-38 as if each was fully set forth herein.

40. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 40 of the Complaint.

41. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 41 of the Complaint.

42. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 42 of the Complaint.

43. Defendants deny knowledge or information sufficient upon which to form a belief as to the truth of the allegations contained in paragraph 43 of the Complaint.

### **AFFIRMATIVE DEFENSES**

1. All allegations not specifically admitted are hereby denied, and all requests for relief should be denied.

2. The Complaint fails to state a claim for which relief can be granted.

3. Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.
  4. Plaintiff's claims are barred in whole or in part by its failure to mitigate damages.
  5. Plaintiff's claims are barred by its own material breach of its contractual agreement(s) with one or more of the Defendants.
6. Plaintiff's claims are barred in whole or in part because it caused its own harm (if any).
7. Any purported damages allegedly suffered by Plaintiff are the results of the acts or omissions of third persons over whom Defendants had neither control nor responsibility.
8. Any purported damages allegedly suffered by Plaintiff were caused by Plaintiff's own actions.
9. Plaintiff's Complaint is barred by the doctrine of estoppel.
10. All claims for relief in the Complaint herein are barred by the applicable statute of limitations.
11. Plaintiff's Complaint is barred by the doctrine of laches.
12. Defendants reserve the right to assert any additional affirmative defenses that become known during the course of this litigation.

WHEREFORE, Defendants, Avi “Zisha” Lipschutz, Dov Newmark, and Larry Lipschutz respectfully request that this Court dismiss Plaintiff’s Complaint in its entirety, with prejudice, and Order such additional relief as the Court deems just and proper, including attorneys’ fees, costs, and any further relief deemed appropriate by this Court.

Respectfully submitted,

/s/

---

James H. West (Federal Bar # 25773)  
West & West, LLC  
409 Washington Avenue, Suite 1010  
Baltimore, Maryland 21204  
Tel: (410) 296-4655  
Fax: (410) 296-6654  
jay.west@westandwestllc.com

*Attorneys for defendants  
Avi “Zisha” Lipschutz, Dov Newmark,  
and Larry Lipschutz*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 14<sup>th</sup> day of November, 2016, the foregoing Answer was served via electronic filing on all counsel of record.

/s/  
James H. West